

Case Summary

Antonio Cheatem, pro se, appeals the revocation of his parole. Specifically, he contends that he was entitled to a preliminary hearing before his parole was revoked. Because the alleged violation of Cheatem's parole was his conviction of new crimes while on parole, Cheatem was not entitled to a preliminary hearing. We therefore affirm the trial court.

Facts and Procedural History

On August 15, 2000, Cheatem was convicted of burglary and sentenced to twenty years in the Indiana Department of Correction with 2778 days of pre-trial credit. Cheatem was released to parole on March 22, 2003. On November 24, 2004, Cheatem was convicted of new crimes, specifically two unrelated counts of forgery, that he committed while on parole. Cheatem was sentenced to four years for Class C felony forgery under Cause No. 49G06-0404-FC-70611 and to four years for Class C felony forgery under Cause No. 49G06-0312-FC-205823, to be served consecutively. On January 11, 2005, Cheatem was notified that a parole violation hearing had been scheduled for January 18, 2005. The Parole Board voted to revoke Cheatem's parole in the burglary case and ordered him to serve the balance of that sentence.

On January 12, 2006, Cheatem, pro se, filed a petition for a writ of habeas corpus alleging that his parole was improperly revoked because there was no preliminary hearing. Thereafter, the State filed a motion for summary disposition, which the trial court granted. Cheatem, pro se, now appeals.

Discussion and Decision

Cheatem contends that he was entitled to a preliminary hearing before his parole was revoked and therefore “the parole violation should [be] dismissed.” Appellant’s Br. p. 3. We first note that the trial court treated Cheatem’s habeas corpus petition as a petition for post-conviction relief, and Cheatem does not challenge this conclusion on appeal. We therefore treat his petition the same way. That is, Cheatem bears the burden of establishing the grounds for relief by a preponderance of the evidence. *Harris v. State*, 836 N.E.2d 267, 272 (Ind. Ct. App. 2005), *trans. denied*. On appeal from the denial of post-conviction relief, we will reverse a post-conviction court’s decision only where the evidence is without conflict and leads unerringly and unmistakably to a decision opposite that reached by the trial court. *Id.* Stated differently, we will disturb a post-conviction court’s decision only where the evidence is uncontradicted and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion. *Id.* We accept the post-conviction court’s findings of fact unless they are clearly erroneous, but we give no deference to the court’s conclusions of law. *Id.*

In support of his argument that he was entitled to a preliminary hearing before his parole was revoked, Cheatem relies on the United States Supreme Court’s opinion in *Morrissey v. Brewer*, 408 U.S. 471 (1972), and Indiana Code § 11-13-3-9. In *Morrissey*, the United States Supreme Court held that parolees charged with violations of parole are within the protection of the Due Process Clause of the Fourteenth Amendment. *Harris*, 836 N.E.2d at 279-80 (citing *Morrissey*, 408 U.S. at 482). As such, parolees are entitled to a two-stage parole revocation procedure: (1) a “preliminary hearing” to determine

whether there is probable cause to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions and (2) a final revocation hearing prior to the final decision on revocation to consider whether the facts as determined warrant revocation. *Id.* at 280 (citing *Morrissey*, 408 U.S. at 485-488). The *Morrissey* court determined that the minimum requirements of due process include written notice of the charges of parole violation, disclosure to the parolee of the evidence against him, an opportunity to be heard in person and to present evidence, the right to confront and cross-examine adverse witnesses, a “neutral and detached” hearing board, and a written statement by the fact-finders of the evidence relied upon and the reasons for revoking parole. *Id.* (citing *Morrissey*, 408 U.S. at 489-90). These due process requirements for parolees are codified at Indiana Code §§ 11-13-3-8, 11-13-3-9, and 11-13-3-10. *Id.* at 280 n.11.

Specifically, Indiana Code § 11-13-3-9(a), which Cheatem cites on appeal, provides:

(a) Upon the arrest and confinement of a parolee for an alleged violation of a condition to remaining on parole, an employee of the department (other than the employee who reported or investigated the alleged violation or who recommended revocation) *shall hold a preliminary hearing to determine whether there is probable cause to believe a violation of a condition has occurred.* The hearing shall be held without unnecessary delay. In connection with the hearing, the parolee is entitled to:

- (1) appear and speak in his own behalf;
- (2) call witnesses and present evidence;
- (3) confront and cross-examine witnesses, unless the person conducting the hearing finds that to do so would subject the witness to a substantial risk of harm; and
- (4) a written statement of the findings of fact and the evidence relied upon.

(emphasis added). Although subsection (a) provides that a preliminary hearing “shall” be held, subsection (d), which Cheatem does not cite on appeal, goes on to provide:

(d) If the alleged violation of parole is the parolee’s conviction of a crime while on parole, *the preliminary hearing required by this section need not be held.*

(emphasis added). Here, Cheatem was convicted of two counts of forgery that he committed while he was on parole for burglary. Proceedings to revoke Cheatem’s parole in the burglary case did not even commence until approximately two months *after* his convictions and sentencing in the forgery cases. Therefore, under Indiana Code § 11-13-3-9(d),¹ Cheatem was not entitled to a preliminary hearing before his parole was revoked. *See Jamerson v. State*, 182 Ind. App. 99, 394 N.E.2d 224, 224 (1979) (noting that the need for a preliminary hearing may be extinguished by the fact that the defendant has been convicted of the crime committed while on parole because the criminal prosecution itself is adequate protection against the evils and dangers that *Morrissey* was designed to protect against). Federal appellate courts have reached the same conclusion under *Morrissey*. *See, e.g., Vershish v. U.S. Parole Comm’n*, 405 F.3d 385, 390 (6th Cir. 2005) (noting that a conviction for a crime committed while on parole “obviate[s] any further

¹ Cheatem also cites Indiana Code § 11-13-3-9(e), which provides “Unless good cause for the delay is established in the record of the proceeding, the parole revocation charge shall be dismissed if the preliminary hearing is not held within ten (10) days *after the arrest.*” (Emphasis added). However, we note that Cheatem was not arrested for violating his parole. Rather, he was arrested, jailed, convicted, and sentenced for committing new crimes. In addition, Cheatem alleges that while he was in Marion County Jail for these crimes, a parole hold was placed on him. However, there is nothing in the record to confirm this. In any event, subsection (d), which provides that a preliminary hearing is not required if the parolee is convicted of a new crime while on parole, controls.

need for a preliminary hearing”). In light of the above, Cheatem has not met his burden of proving that he is entitled to post-conviction relief. We therefore affirm the trial court.

Affirmed.

BAKER, J., and CRONE, J., concur.